

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE

AIR CARGO SHIPPING SERVICES
ANTITRUST LITIGATION

MDL No. 1775

06-MD-1775 (JG) (VVP)

THIS DOCUMENT RELATES TO:
All Actions

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO AUTHORIZE
DISTRIBUTION OF THE AIR CARGO 3 SETTLEMENT FUND**

Plaintiffs respectfully submit this memorandum in support of their motion to authorize distribution of funds from the Air Cargo 3 settlements (as defined below) to claimants.

I. FACTUAL BACKGROUND

The Court previously authorized distribution of funds from settlements with two different groups of Defendants in this case: (1) the “Lufthansa” settlement with Defendants Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd.; and (2) the “Air Cargo 2” settlements, with Defendants Cargolux Airlines International, S.A.; All Nippon Airways Co., Ltd.; Thai Airways International Public Company Limited; Qantas Airways Limited; Société Air France, Koninklijke Luchtvaart Maatschappij N.V. and Martinair Holland N.V.; Japan Airlines International Co., Ltd. (“JAL”); American Airlines, Inc. and AMR Corporation; and Scandinavian Airlines System and SAS Cargo Group A/S. *See* ECF Nos. 1561, 1673, 1680.

Plaintiffs now seek authorization to distribute funds from settlements with a third group of Defendants (the “Air Cargo 3” settlements) which have been granted final approval by the Court: Lan Airlines, S.A., Lan Cargo, S.A., and Aerolinhas Brasileiras, S.A. (collectively, “Lan/ABSA”); British Airways plc (“British Airways”); South African Airways Ltd. (“South African”); Malaysia Airlines (“Malaysia”); Saudi Arabian Airlines, Ltd (“Saudia”); Emirates; El Al Israel Airlines Ltd. (“El Al”); and Air Canada and AC Cargo LP (collectively, “Air Canada”). *See* ECF No. 1732. The Garden City Group, (“GCG”), serving as the Court-approved Claims Administrator, has engaged in the complex claims administration process, and the Settlement Fund, minus the deductions set forth in more detail below, is ready to be distributed to Settlement Class members. *See* Declaration of Jennifer M. Keough Re: Air Cargo 3 Claims Administration, dated August 22, 2013 (“Keough Declaration”).

II. CLAIMS ADMINISTRATION PROCESS

GCG was charged with various administrative tasks, including: disseminating notices; publishing summary notices; receiving and processing claims and requests for exclusion; responding to class member inquiries; establishing and maintaining a settlement website; and performing such other duties as may be directed by the Court or the parties. *Id.* at ¶ 1. GCG also conducted the administrative tasks associated with collecting claim forms from claimants seeking compensation from the Settlement Fund, evaluating and auditing those claim forms, and ultimately calculating the appropriate allocated amount for each qualified claimant. *Id.* The claims review and audit process was thorough and time consuming.

A. Claim Form Deadline and Documentation

The settlement class definitions for the Air Cargo 2 and Air Cargo 3 settlement classes are identical. Therefore, Class members that had filed an approved claim form in connection with the Air Cargo 2 settlements were not required to submit another claim form for consideration in connection with the Air Cargo 3 settlements. *Id.* at ¶ 2. The deadline for filing new claims against the Air Cargo 3 settlement fund was July 27, 2012.

The claim form required each claimant to provide information related to the amount of outbound and inbound purchases of air cargo, among other information.¹ *Id.* at Ex. 1 (blank claim form). Each claimant also had to verify the accuracy of the information provided on the claim form under penalty of perjury. *Id.* While claimants were not initially required to submit supporting documentation of their air cargo purchases with their claim forms, the claim form asked each claimant to agree to provide additional supporting information in response to any

¹ For claimants who filed claims in currencies other than the U.S. Dollar (“USD”), the claimed amount was converted into USD based on the currency exchange rates applicable on September 11, 2006. *Id.* at ¶ 12.

specific GCG request. Keough Decl. at ¶ 4. The claim form also contains a section providing that the signing party certifies under penalty of perjury that, under among other things, there is documentation to support the claim. *Id.* at Ex. 1.

B. Deficiency Review and Audit Process

GCG received an additional 513 Air Cargo 3 claims on top of the 2,638 Air Cargo 2 claims it had previously received and reviewed.² *Id.* at ¶ 2. As it had done with the Air Cargo 2 claim forms, GCG compiled the information provided in the Air Cargo 3 claim forms in its proprietary database and identified claims that were deficient because they failed to provide required information. *Id.* at ¶ 3. The deficiencies included: missing signature; failure to provide purchase amount or purchase amount illegible; failure to provide the Defendant from whom shipping services were purchased; failure to provide currency or currency illegible; and failure to provide claims preparer contract. *Id.* GCG mailed or otherwise communicated to claimants any identified deficiencies and provided them an opportunity to cure such deficiencies. *Id.* Of the 96 claimants with deficiencies, 49 did not respond or their deficiencies were not resolved, and their claims were therefore deemed invalid. *Id.*

In addition to following up regarding deficient claim forms, GCG also audited all claims (from both Air Cargo 2 and Air Cargo 3) with an estimated payment value over \$50,000 and a sampling of all other claims. Keough Decl. at ¶ 4. This resulted in a group of claims which represent over 90% of the total inbound and outbound values claimed by class members eligible for payment. *Id.* Many of the claims selected had previously been audited as part of the Air

² During the claims administration process, some claimants requested that their claims be withdrawn, and other claims were found to be duplicative. *Id.* at ¶ 6. In total, 95 claims were identified as such and were removed from further review and processing. *Id.*

Cargo 2 audit process and therefore documentation was already on file.³ *Id.* If no documentation had previously been provided by the claimant or if the documentation on file was not sufficient, GCG mailed letters to the claimants requesting supporting documentation. *Id.* After reviewing the selected claimants' responses, GCG engaged in discussions with claimants, where necessary. *Id.* For claimants who did not respond to the request for supporting documentation, GCG followed up with reminder phone calls and e-mails providing them with multiple opportunities to provide supporting documentation. *Id.* There were 61 claimants who failed to respond to these requests or whose audit responses were deemed insufficient. *Id.*

C. Late-Filed Claims

Nine (9) claimants filed claims after the deadline. *Id.* at ¶ 5. None of these claims was received so late as to interfere with the claims administration process. *Id.* Therefore, all such claims were included and treated as timely claims for purposes of the settlement distribution, and Settlement Class Counsel recommend that they be accepted by the Court. It is appropriate for the Court to approve distribution to claimants who filed these late claims, particularly where, as here, it is equitable to do so. *See Zients v. LaMorte*, 459 F.2d 628, 629-30 (2d Cir. 1972) (accepting late claims where made before the distribution of funds); *see also In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 843 (E.D.N.Y. 1995) (citing *Zients*, 459 F.2d at 629-30).

D. The Settlement Fund

The available Air Cargo 3 settlement funds total \$132,030,205.48.

- Air Canada: \$5,550,205.38;
- British Airways: \$55,267,927.81;

³ For the Air Cargo 2 audit, GCG selected a group of claims which represented over 85% of the total inbound and outbound values claimed by Class members claims to audit through a review of supporting documentation. *See* ECF No. 1668-3 at ¶ 6.

- El Al: \$8,091,499.02 (includes initial deposit and first installment);
- Emirates: \$5,796,634.61;
- Lan/ABSA: \$42,160,713.58;
- Malaysia: \$2,368,119.49;
- Saudia: \$10,360,383.55; and
- South African: \$2,434,722.04.

Id. at ¶ 8. The balances above include earned interest and reflect reductions for the payment of attorneys' fees and expenses approved by the Court (ECF No. 1732).

However, the settlement funds, which are responsible for payment of their own taxes and tax-related expenses, have incurred and been invoiced \$44,000 for tax preparation services. *Id.* at ¶ 9. In most cases, there were multi-year returns involved, along with quarterly handling and reporting. *Id.* In addition, the invoiced administrative fees and expenses – including publication of notice, direct mail of notice, and claims administration through the distribution of checks – is \$703,737.73. *Id.* at ¶ 10. Pursuant to their settlement agreements, British Airways, South African, Malaysian, and LAN have agreed to pay certain notice and administration costs and are responsible for a total of \$686,600.86 towards these fees and expenses. *Id.* Therefore, the remaining amount of administrative fees and expenses to be paid by the Settlement Fund is only \$17,136.87. *Id.*

The remaining amount of the Settlement Fund, after the above adjustments, is \$131,969,068.61. *Id.* at ¶ 11. This amount represents the total amount available for distribution to claimants, *i.e.*, the Net Settlement Fund.

III. PROPOSED DISTRIBUTION

The Net Settlement Fund will be allocated in accordance with the Plan of Allocation approved by the Court. ECF No. 1732. Under the Plan of Allocation, the Net Settlement Fund shall be distributed to Settlement Class members that submit valid claim forms in proportion to their relevant purchases from defendants of Airfreight Shipping Services. Shipments into the United States will be valued at 1.625 times the dollar amount of such purchases; purchases of Airfreight Shipping Services for shipments out of the United States will be valued at the dollar amount of such purchases.

GCG has completed the processing of claims in connection with the Air Cargo 3 settlements. The Net Settlement Fund is now available for distribution to Settlement Class members who have submitted valid claims. The distribution will be made pursuant to the chart attached as Exhibit 3 to the Keough Declaration, which shows information about each claimant's purchases, identifying claimants by numbers as opposed to names for purposes of confidentiality, and GCG's recommended allocation as determined according to the Plan of Allocation. Additionally, GCG, in consultation with Settlement Class Counsel, recommends that all claimants receive a minimum payment of \$5.00, as was done for the Lufthansa and Air Cargo 2 distribution. *Id.* at ¶ 11.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court authorize distribution of the Net Settlement Funds to Settlement Class members who have submitted valid claims as set forth above and in the Keough Declaration.

Dated: August 23, 2013

Respectfully submitted,

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